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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS RODRIGUEZ SILVA,

Defendant and Appellant.

2d Crim. No. B297296  
(Super. Ct. No. 2018038946)  
(Ventura County)

Jesus Rodriguez Silva appeals a judgment following his conviction of assault with a deadly weapon, and infliction of injury upon a dating partner, with findings concerning use of a deadly weapon, a released-on-bail allegation, a prior serious felony and strike conviction, and service of two prior prison terms. (Pen. Code, §§ 245, subd. (a)(1), 273.5, subd. (a), 12022, subd. (b)(1), 12022.1, subd. (b), 667, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).)<sup>1</sup> We strike the two prior prison term enhancements of section 667.5, subdivision (b), and

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<sup>1</sup> All further statutory references are to the Penal Code unless stated otherwise.

reverse and remand for resentencing in light of the changed circumstances.

This appeal concerns domestic violence that Silva committed against his girlfriend, Y.J. Police officers lawfully overheard and recorded a telephone conversation wherein Silva admitted stabbing her. Y.J.'s girlfriend witnessed an argument between Y.J. and Silva, although she did not see the contemporaneous stabbing. She later cleaned and dressed the stab wound on Y.J.'s arm. The prosecutor was unable to locate Y.J. and she did not testify at trial. Silva now raises arguments concerning the asserted lack of a corpus delicti, prejudicial evidence of his possible gang membership, and striking of the prior prison term enhancements.

#### *FACTUAL AND PROCEDURAL HISTORY*

On March 17, 2016, Oxnard Police Detective Jose Velasquez lawfully overheard and recorded a telephone call between Silva and his mother. During the conversation, Silva stated: “[Y.J.] got stupid, I stabbed that bitch last night. . . . I stabbed her ass and she went to the hospital last night I guess, I do not know.”

Later that day, Velasquez lawfully overheard and recorded another telephone call between Silva and an unidentified female. Silva asked whether Y.J. had phoned her. The female stated that Y.J. had sent her text messages concerning treatment of a wound. The female recommended that Y.J. seek medical treatment. Silva then stated, “No, don’t even bother . . . .”

That day, Ventura County Sheriff’s Deputy Brian Whittaker located Y.J. He saw that she had a cut on her upper right arm that was covered with a band-aid that was blood-saturated. Whitaker estimated that the cut was one-half to

three-quarters inch in length and was caused by a fine-edge knife blade. Whittaker photographed the wound. He also encouraged Y.J. to seek medical treatment to prevent infection.

Deputies then detained and arrested Silva. During a recorded police interview, Silva stated that Y.J. was his girlfriend and he stayed sometimes at her apartment. He stated that he did not see Y.J. on March 17, 2016, and was unaware that she had been injured. Silva stated that he had been drinking with friends that evening.

Deputies later searched Y.J.'s apartment and found photographs of her and Silva, two knives, a blood-stained towel, blood-saturated bandages, and bloodstains on the floor. Deputies took photographs of these discoveries.

On March 18, 2016, Sheriff's Deputy Bryan Silva contacted Vanessa Zuniga, a friend to Y.J. Zuniga stated that she had observed Silva and Y.J. arguing the evening of March 17, 2016. Zuniga did not see Silva attack or stab Y.J., but following his departure, she saw that Y.J.'s arm was bleeding. Zuniga recommended that Y.J. seek hospital treatment, and when Y.J. refused, Zuniga "clean[ed] it" and placed "tape around it." The interview with Zuniga was recorded.

At trial, Zuniga testified that she did not recall the argument between Silva and Y.J. and did not see a stabbing injury. She stated that she might have informed interviewing officers differently, but she was in a hurry during the interview and was intimidated by the presence of many officers.

The prosecutor played the recordings at trial and the trial court received the recordings and photographs into evidence. The court also permitted evidence that Silva suffered five prior offenses involving domestic violence.

The jury convicted Silva of assault with a deadly weapon (count 1), and the infliction of injury upon a dating partner (count 2). (§§ 245, subd. (a)(1), 273.5, subd. (a).) It also found that he personally used a deadly weapon, a knife. (§ 12022, subd. (b)(1).) In a separate proceeding, Silva waived his right to a jury trial and admitted the remaining allegations. The trial court sentenced him to a prison term of 16 years, consisting of a three-year midterm for count 2 (then doubled), one year for the use of a deadly weapon, two years for the released-on-bail finding, five years for the prior serious felony finding, and two years for two prior prison term findings. The court imposed but stayed a concurrent sentence for count 1 pursuant to section 654. It also imposed various fines and fees and awarded Silva 2,264 days of presentence custody credit.

Silva appeals and contends that: 1) insufficient evidence exists that a crime was committed in violation of the state and federal Constitutions; 2) counsel was ineffective for failure to exclude all evidence of possible criminal street gang membership; and 3) his two prior prison term enhancements must be struck pursuant to Senate Bill No. 136, amending section 667.5, subdivision (b). The Attorney General concedes the latter.

## *DISCUSSION*

### *I.*

Silva argues that there is insufficient evidence of a corpus delicti, i.e., that Y.J.'s arm wound was caused by a criminal agency.

The corpus delicti rule requires corroboration of the defendant's extrajudicial statements that indicate a crime was committed. (*People v. Krebs* (2019) 8 Cal.5th 265, 317.) “In every criminal trial, the prosecution must prove the corpus

delicti, or the body of the crime itself . . . . In California, it has traditionally been held, the prosecution cannot satisfy this burden by relying *exclusively* upon the extrajudicial statements, confessions, or admissions of the defendant.’” (*People v. Amezcua and Flores* (2019) 6 Cal.5th 886, 912, fn. 13.) The independent proof may be circumstantial and it need not be beyond a reasonable doubt. (*Ibid.*) A slight or prima facie showing permitting the reasonable inference that a crime was committed is sufficient. (*Ibid.*) Thus, the amount of independent proof of a crime required to satisfy the corpus delicti rule is “‘quite small.’” (*Krebs*, at p. 317.) Moreover, it is not necessary for the independent evidence to establish that the defendant was the perpetrator. (*Amezcua and Flores*, at p. 912, fn. 13.)

Here sufficient evidence and all reasonable inferences therefrom establish that a crime was committed. A police detective lawfully overheard Silva inform his mother that he had stabbed Y.J. The detective later overheard an unidentified female inform Silva that Y.J. had sent a text message to her regarding treatment of a stab wound. That same day, a sheriff’s deputy contacted Y.J. and observed that she had a blood-saturated bandage covering a wound on her upper arm. The wound, in his experience, was consistent with a wound inflicted by a fine-edged knife blade. A later search of Y.J.’s apartment produced a blood-stained towel, blood-saturated bandages, and bloodspots on the floor. When interviewed by police officers, Zuniga stated that although she did not see Silva stab Y.J., the two had argued and it appeared that Silva intended to strike Y.J. Zuniga then cleaned and dressed Y.J.’s stab wound after Silva left the apartment. It is a reasonable inference from Zuniga’s interview statements that Silva stabbed Y.J. during or after their

argument. The prosecution has satisfied its burden of establishing the corpus delicti for the crimes charged against Silva.

## *II.*

Silva contends that he received ineffective assistance of counsel because his attorney did not exclude evidence of his possible criminal street gang membership. He points out that Police Officer Martin Cook stated that his current assignment was the gang unit and SWAT team; Deputy Victor Medina testified that his current assignment was with the gang unit; and Deputy Whittaker testified that during his 20 years of service, he has attended narcotics training classes, gang seminars, and different training classes, but presently worked in special crimes. Silva adds that gang membership was not in issue at trial and that such evidence is unduly prejudicial.

Nine law enforcement officers testified at trial and most stated their current assignments as of the time of trial, nearly three years following commission of the crimes. The current assignments mentioned include homicide, gang and SWAT team, special crimes, narcotics, and special enforcement. The single question and answer regarding the current assignment could not possibly have prejudiced Silva. The current assignments were nearly three years following commission of the charged crimes, and were routine questions asked of the law enforcement witnesses. It is common sense that law enforcement officers may be transferred from one detail to another as need arises. Silva suffered no prejudice from this information and his attorney was not ineffective for failing to object. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-692 [80 L.Ed.2d 674, 693-696])

[statement of general rule]; *People v. Mickel* (2016) 2 Cal.5th 181, 198 [same].)

### III.

Effective January 1, 2020, Senate Bill No. 136 amended section 667.5, subdivision (b) to provide: “[T]he court shall impose a one-year term for each prior separate prison term for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code . . . .” (Stats. 2019, ch. 590, § 1.) Silva asserts that his two one-year prior prison term enhancements must be struck because the prison terms were served for drug and domestic violence offenses, not sexually violent offenses.

“ ‘When the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final.’ ” (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 307.)

Silva’s judgment is not yet final and thus Senate Bill No. 136 applies to him. (*People v. Jennings* (2019) 42 Cal.App.5th 664, 682.) His prior prison terms were not served for sexually violent offenses and he is entitled to the benefit of the amendment to section 667.5, subdivision (b).

Thus, we strike the two one-year prior prison term enhancements and reverse and remand for resentencing to permit the trial court to exercise its sentencing discretion in light of changed circumstances. (*People v. Buycks* (2018) 5 Cal.5th 857, 893; *People v. Jennings, supra*, 42 Cal.App.5th at p. 682.)

#### DISPOSITION

We modify the judgment to strike the two one-year prison term enhancements imposed pursuant to section 667.5, subdivision (b), and reverse and remand for resentencing. We direct the trial court to prepare an amended abstract of judgment accordingly and to forward the amended abstract to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

GILBERT, P. J.

I concur:

PERREN, J.

TANGEMAN, J.



Gilbert A. Romero, Judge

Superior Court County of Ventura

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